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E-FILED 5/28/08

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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EDY BARRIOS,

NO. C 07-02189 JF (RS)

Plaintiff,

**ORDER GRANTING MOTIONS
TO COMPEL**

v.

JANPRO, INC., JOSE MENDOZA, DOES 1-10,

Defendants

/

I. INTRODUCTION

Plaintiff Edy Barrios has filed federal and California claims for recovery of unpaid overtime wages and related penalties against Janpro, Inc., a San Jose janitorial services firm, and Jose Mendoza, President of Janpro. On October 2, 2007, Barrios served Janpro and Mendoza with special interrogatories and a request for the production of documents related to her employment hours and duties. (Pl. Ex. 2.) After several failed attempts to obtain this discovery from Janpro and Mendoza over the course of six months, she has filed four related motions to compel discovery pursuant to Rule 37 of the Federal Rules of Civil Procedure. These include two motions to compel response to special interrogatories, filed against Janpro and Mendoza, and two motions to compel production of documents, again against Janpro and Mendoza. Barrios has provided the required certification that she has made a good faith effort to obtain this discovery without court action. (Pl. Mots. to Compel 2.) The Court finds these matters suitable for disposition without oral argument, pursuant to Civil Local Rule 7-1(b). As

1 the information sought appears reasonably calculated to lead to the discovery of admissible
2 evidence and the motions are unopposed, they will be granted.

3 **II. BACKGROUND**

4 Pursuant to FRCP 33 and 34, Plaintiff served special interrogatories and a request to
5 produce documents upon Janpro and Mendoza on October 2, 2007. (Pl. Ex. 1.) Janpro and
6 Mendoza failed to respond to either request within 30 days, as required under FRCP 33(b)(2)
7 (pertaining to special interrogatories) and FRCP 34(b)(2)(A) (pertaining to the production of
8 documents). Instead, on November 15th, Defendants wrote to Barrios to request a two-week
9 extension. (Pt. Ex. 3.) Despite three written inquiries and warnings of a motion to compel (Pl.
10 Ex. 5-7), Defendants have failed to provide this discovery and instead have requested
11 extensions, but then missed deadlines (Pl. Ex. 3, 7-8). On March 13, 2008, Defendants
12 requested delay of the Rule 37 motions, indicating that one of defense counsel's colleagues had
13 committed suicide earlier that week. (Pl. Ex. 8.) Having not received the requested documents
14 three weeks later, Barrios filed these motions to compel on April 5, 2008.

15 **III. STANDARDS**

16 Under FRCP 33 and 34, a party answering special interrogatories or a request for the
17 production of documents must provide a written response to each item requested within 30
18 days of service. Fed. R. Civ. P. 33(b)(2), 34(b)(2). This response must include either a
19 specific objection, an answer to the interrogatory, or an agreement to produce each of the
20 documents requested. Fed. R. Civ. P. 34(b)(2)(A), (B). FRCP 37 grants judicial authority to
21 compel disclosure where a party has failed to provide authorized discovery in a timely fashion.
22 A judge may grant a motion to compel discovery upon certification that the moving party has
23 attempted in good faith to obtain the discovery without court action. Fed. R. Civ. P 37(a)(1).

24 **IV. DISCUSSION**

25 Plaintiff has provided sufficient documentation and certification that Defendants failed
26 to produce timely discovery as required by FRCP 33 and 34, and that she attempted to obtain
27 the requested discovery without court involvement. (Pl. Ex. 3-8; Pl. Mots. to Compel 2).
28 While the Court has sympathy for the loss suffered by defense counsel in March, his

1 deficiencies in discovery predate this event by several months. (Id.) As Plaintiff's requests
2 appear reasonably calculated to lead to the discovery of admissible evidence, as required by
3 FRCP 26, and the motions are unopposed, the motions are granted.

4 V. CONCLUSION

5 The four motions to compel are granted. Defendants are ordered to respond to
6 Plaintiff's special interrogatories and to produce the requested documents within 10 days of
7 this order.

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9 IT IS SO ORDERED.

10 Dated: May 28, 2008



11 RICHARD SEEBORG
12 United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:**

2 Alfred R. Buzo alfredbuzo@hotmail.com

3 James Dal Bon jdblaw@earthlink.net

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5 Counsel are responsible for distributing copies of this document to co-counsel who have not
6 registered for e-filing under the Court's CM/ECF program.

7 **Dated: 5/28/08**

Richard W. Wieking, Clerk

8 **By: Chambers**

United States District Court

For the Northern District of California

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